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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. QUENTIN AVERY MILLER, Defendant and Appellant.	B267728 (Los Angeles County Super. Ct. No. BA428962)

APPEAL from an order of the Superior Court of Los Angeles County. Dennis J. Landin, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, William N. Frank, Deputy Attorney General, for Plaintiff and Respondent.

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California's anti-pimping statute makes it a crime, among other things, for a person to knowingly derive his "support or maintenance" from a prostitute's earnings. (Pen. Code, § 266h, subd. (a).)[1] The substantive due process component of the due process clause severely limits a state's power to interfere with certain fundamental liberty interests, including the right to make the "most basic decisions about family." (*Planned Parenthood of Southeastern Pa. v. Casey* (1992) 505 U.S. 833, 849 (*Casey*).) If a pimp and his prostitute have had a prior intimate relationship and continue to live together and share living expenses, does the anti-pimping statute unconstitutionally interfere with the pimp's fundamental right to choose his "family"? The statute is not facially invalid (*People v. Grant* (2011) 195 Cal.App.4th 107, 111-117 (*Grant*)), but is it invalid as applied to such a pimp? We conclude the answer is no.

FACTS AND PROCEDURAL BACKGROUND

Quentin Avery Miller (defendant) met Tiffani M. (Tiffani) back in 2011, when Tiffani was just 16 years old. They dated and lived together for two or three years. After they broke up, Tiffani and the son she had with another man twice moved in with defendant: She lived with defendant and other roommates for seven months in 2013, and with defendant and others for a few months in early 2014.

During these times Tiffani lived with defendant, he told her he needed money and encouraged her to be a prostitute for him. He instructed her on what to charge for various sex acts and what sorts of men to "date"; he bought her pepper spray to protect herself; he drove her to the locales where men trolled for prostitutes; and he bailed her out of jail when she was eventually arrested for prostitution in 2014. Indeed, Tiffani even got defendant's "pimp name"—"Savage"—tattooed on her body. Tiffani always contributed all or some of her earnings to pay the expenses of the household she shared with defendant and the others.

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1 All further statutory references are to the Penal Code unless otherwise indicated.

The People charged defendant with several crimes, including pimping Tiffani for three months in early 2014 (§ 266h, subd. (a)). The People further alleged that he did so at the direction of, for the benefit of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(A)). A jury convicted defendant of the pimping count, but found the gang allegation not true. Defendant was acquitted of every other charged crime.[2]

The trial court imposed a prison sentence of three years.

Defendant filed this timely appeal.

DISCUSSION

In this appeal, defendant argues that (1) there is insufficient evidence to support his conviction for pimping, and (2) the pimping statute is unconstitutional as applied to him. Because our resolution of the first issue may obviate the need to reach the second, constitutional issue (e.g., *People v. Moran* (2016) 1 Cal.5th 398, 401-402, fn. 2 [courts should avoid reaching constitutional questions unless necessary]), we turn first to the sufficiency question.

I. Sufficiency of the Evidence

California's anti-pimping statute prohibits (1) "liv[ing]" on a prostitute's earnings, (2) "deriv[ing] support or maintenance" from a prostitute's earnings, and (3) "solicit[ing] or receiv[ing] compensation for soliciting" a prostitute. (§ 266h, subd. (a); *People v. McNulty* (1988) 202

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2 The People charged defendant with (1) human trafficking of a minor for a sex act (§ 236.1, subd. (c)(1)) regarding a second woman; (2) pimping a minor 16 years or older (§ 266h, subd. (b)(1)) regarding Tiffani in 2011 and 2012; (3) pimping (§ 266h, subd. (a)) regarding Tiffani in 2012 and 2013; (4) dissuading a witness (§ 136.1, subd. (b)(2)); (5) assault with a firearm (§ 245, subd. (a)(2)); (6) pimping a minor 16 years or under (§ 266h, subd. (b)(2)) regarding a third woman; (7) pandering a minor 16 years or under (§ 266i, subd. (b)(2)) regarding the third woman; and (8) oral copulation of a person 16 years or under (§ 288a, subd. (b)(2)) regarding the third woman. The People further alleged that the first four crimes were gang related (§ 186.22, subd. (b)(1)(A)) and that defendant personally used a firearm during the assault (§ 12022.5, subds. (a) & (d)). The trial court acquitted defendant of the witness dissuasion count at the close of evidence, and the jury acquitted him of the remainder.

Cal.App.3d 624, 630.) To convict a defendant under the second prong at issue here, the People must prove that (1) the defendant "derive[d] [his] support or maintenance in whole or in part" from a prostitute's "earnings or proceeds," (2) the defendant knew the person was a prostitute, and (3) the defendant knew the earnings or proceeds used for his support or maintenance came from prostitution. (§ 266h, subd. (a); *People v. Tipton* (1954) 124 Cal.App.2d 213, 217-218 (*Tipton*); *People v. Simpson* (1926) 79 Cal.App. 555, 559.)

In evaluating the sufficiency of the evidence underlying a conviction, we ask only whether there was enough credible evidence of solid value for a rational jury to find the defendant guilty beyond a reasonable doubt. (*People v. Shamblin* (2015) 236 Cal.App.4th 1, 9.) We do so while viewing the record as a whole in the light most favorable to the jury's guilty verdict, which includes drawing all reasonable inferences and resolving all credibility determinations in favor of that verdict. (*People v. Prunty* (2015) 62 Cal.4th 59, 89.)

The evidence in this case amply supports defendant's conviction for pimping. Tiffani testified that, in early 2014, defendant charged her $250 per month for household expenses, that he knew she was working as a prostitute, and that he knew that the money she paid him came from her income as a prostitute. Indeed, defendant himself admitted to all of these facts when he took the stand at trial.

Defendant levels three specific challenges to the sufficiency of the evidence.

First, he asserts that he cannot be guilty of pimping because, at most, he lived off of her prostitution income but was not involved in her prostitution business. This argument confuses the crime of pimping by deriving support with the crime of pandering. Pandering involves the active procurement, encouragement or inducement of a person to engage in prostitution with the intent "to persuade or otherwise influence the target 'to become a prostitute.'" (§ 266i, subd. (a); *People v. Zambia* (2011) 51 Cal.4th 965, 980.) Pimping by deriving support is a general intent crime and does not require any active involvement in the prostitution. (*People v. Gibson* (2001) 90 Cal.App.4th 371, 386.) Defendant goes on to suggest that the reduced intent requirement for pimping by deriving support renders it an impermissible strict liability crime

(*In re Jorge M.* (2000) 23 Cal.4th 866, 879 [noting general prohibition set forth in section 20 against crimes having no mens rea requirement but carrying substantial penalties]), but his argument ignores that this type of pimping has two knowledge requirements that preclude its classification as a strict liability crime (*People v. Rubalcava* (2000) 23 Cal.4th 322, 331-332). Moreover, even if a defendant's active involvement were an element of pimping by deriving support, defendant *was* involved in Tiffani's prostitution because he told her how much to charge and drove her to find "dates." Defendant protests that he denied any involvement when he testified, but Tiffani testified to the contrary and, in evaluating the sufficiency of the evidence, we must resolve this conflict in the evidence—like all others—in the light most favorable to the guilty verdict. (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1086.)

Second, defendant argues that in 2014 he had a job at AutoZone and lived in government subsidized housing, and therefore did not need Tiffani's monthly contribution to make ends meet. However, such necessity is not a requirement, and its absence is consequently not a defense. The statute itself only requires that the pimp "derive[] [his] support or maintenance in whole or *in part*." (§ 266h, subd. (a), italics added.) That the pimp has income from other sources is of no concern. (*People v. Coronado* (1949) 90 Cal.App.2d 762, 766 ["if such earnings are received knowingly and applied to the support of the accused person, under the circumstances mentioned in the statute, he would be guilty of pimping regardless of his wealth, possessions or legitimate income from other sources"]; *People v. Courtney* (1959) 176 Cal.App.2d 731, 739-740 [gainful employment is not a defense to pimping].) The anti-pimping statute was meant to reach "'opulent violators'" as well as "'impecunious ones.'" (*People v. Kennedy* (1962) 200 Cal.App.2d 814, 817.)

Third, defendant contends that he used Tiffani's money to pay household expenses. This fact does not exonerate him; to the contrary, it is an element of the offense necessary to convict him.

II. Substantive Due Process Challenge

The federal Constitution provides that "[n]o State" shall "deprive any person of life, liberty, or property, without due process of law." (U.S. Const., art. XIV, § 1; see also Cal. Const., art. I, § 7, subd. (a) ["[a] person may not be

deprived of life, liberty, or property without due process of law"].) Due process not only guarantees that certain, minimum procedural safeguards will be followed before a person is deprived of life, liberty or property (*Mathews v. Eldridge* (1976) 424 U.S. 319, 334-335), but also has a substantive component that places certain deprivations beyond the power of the State to effect—regardless of the procedural safeguards that are provided—absent a sufficiently compelling justification (*Reno v. Flores* (1993) 507 U.S. 292, 301-302).

In examining whether a particular statute violates this substantive due process guarantee, we must ask four questions. *First*, what right or interest is the challenger asserting? (*In re Lira* (2014) 58 Cal.4th 573, 585 ["[s]ubstantive due process analysis begins with a '"careful description"' of the asserted fundamental liberty interest"].) *Second*, is that right or interest "fundamental"—that is, is it "'so rooted in the traditions and conscience of our people as to be ranked as fundamental'"? (*United States v. Salerno* (1987) 481 U.S. 739, 751, quoting *Snyder v. Massachusetts* (1934) 291 U.S. 97, 105.) *Third*, does the statute interfere with or infringe upon that right or interest? (*Washington v. Glucksberg* (1997) 521 U.S. 702, 720 (*Glucksberg*); *In re Lira*, at p. 585.) *Fourth*, and if the answer to the third question is yes, does the statute pass the appropriate level of constitutional scrutiny? If a fundamental right or interest is at stake, we ask: Is the statute's infringement on that right or interest """narrowly tailored to serve a compelling state interest"""? (*In re Taylor* (2015) 60 Cal.4th 1019, 1036 (*In re Taylor*).) If no fundamental right or interest is at stake, we simply inquire: Is the statute's infringement on that right or interest "rationally related to legitimate government interests" and hence not arbitrary? (*Glucksberg*, at p. 728; *People v. Alexander* (2010) 49 Cal.4th 846, 892.) We independently review constitutional questions. (*In re Taylor*, at p. 1035.)

With respect to the first step of this analysis, defendant is asserting a liberty interest or right to cohabitate (and to share the expenses of cohabitation) with a former girlfriend and her child with another man. Because defendant is challenging the anti-pimping statute as it applies to him, our inquiry is limited to asking "whether *in [these] particular circumstances* the application [of the anti-pimping statute] deprived the

individual to whom it was applied of a protected right" or interest. (*In re Taylor*, *supra*, 60 Cal.4th at p. 1039, citing *Broadrick v. Oklahoma* (1973) 413 U.S. 601, 615-616, italics in original.)

Defendant's as-applied challenge is without merit because he cannot establish any of the remaining steps necessary to establish a constitutional violation. The rights and interests ranked as fundamental under substantive due process analysis are confined to a person's right to "bodily integrity" and, most pertinent here, "a person's most basic decisions about family and parenthood." (*Casey*, *supra*, 505 U.S. at p. 849.) These decisions include whom to marry (*Obergefell v. Hodges* (2015) 135 S.Ct. 2584, 2598; *Loving v. Virginia* (1967) 388 U.S. 1, 11-12); whether to have non-commercial, consensual sex with one's adult partner (*Lawrence v. Texas* (2003) 539 U.S. 558, 567, 573-574 (*Lawrence*)); whether to use contraceptives (*Griswold v. Connecticut* (1965) 381 U.S. 479, 485-486; see also *Eisenstadt v. Baird* (1972) 405 U.S. 438, 453 [extending right, via equal protection analysis, to unmarried couples]); whether to procreate (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541); whether to terminate a pregnancy (*Roe v. Wade* (1973) 410 U.S. 113, 164; *Casey*, at pp. 849, 851); and how to raise one's children (*Pierce v. Society of Sisters* (1925) 268 U.S. 510, 535; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399). Courts are naturally reluctant to recognize new fundamental rights or interests, and for good reason: The "'guideposts'" used to designate a right or interest as fundamental are notoriously "'scarce and open-ended'" (*Albright v. Oliver* (1994) 510 U.S. 266, 271-272), and such a designation "to a great extent[] place[s] the matter outside the arena of public debate and legislative action" (*Glucksberg*, *supra*, 521 U.S. at p. 720).

Although defendant purports to assert a right or interest in having a new and different type of "quasi-familial relationship[]," he is at bottom asserting a right to have a former lover as a roommate. Although the definition of a "family" for constitutional purposes is not necessarily limited to biological relationships (*Smith v. Organization of Foster Families* (1977) 431 U.S. 816, 843-844), the right defendant asserts is not a "basic decision[] about family and parenthood" no matter *how* family is defined. Defendant's right or interest also concerns the financial arrangement among cohabitants,

and such arrangements are rarely fundamental. (See *Lawrence*, *supra*, 539 U.S. at pp. 575-577; *Grant*, *supra*, 195 Cal.App.4th at pp. 112-113.)

Even if we assumed that the right or interest defendant asserts is fundamental, the anti-pimping statute does not infringe upon or interfere with that right or interest because it merely prohibits a person from knowingly using a prostitute's earnings to support a household. As long as a person does not use earnings from prostitution to support and maintain himself, the statute places no limits whatsoever on a person's right to cohabitate with a prostitute (or her children). In this respect, the anti-pimping statute is indistinguishable from the injunction at issue in *People v. Englebrecht* (2001) 88 Cal.App.4th 1236. There, the court upheld an anti-gang injunction that prohibited gang members from congregating within a specific geographical area. (*Id.* at pp. 1262-1263.) Although the injunction interfered with the right of family members who all belonged to a gang to associate with one another, this interference was not unconstitutional because the injunction "place[d] no restrictions on contact between any individuals outside the target area." (*Ibid.*) The anti-pimping statute's interference with defendant's right to cohabitate with Tiffani and her son is similarly avoidable and hence not unconstitutional. What is more, because the anti-pimping statute is "'directed at curbing the exploitation of commercial prostitution practiced by others,'" it "'do[es] not involve the offender's *personal* interest[s].'" (*Grant*, *supra*, 195 Cal.App.4th at p. 113, quoting *People v. Mason* (Colo. 1982) 642 P.2d 8, 12-13, italics added.)

The anti-pimping statute is also rationally related to a legitimate public interest, which is the pertinent test to apply when a statute does not infringe upon or interfere with a fundamental right or interest. (*Glucksberg*, *supra*, 521 U.S. at p. 728.) For over a century, California has criminalized the act of pimping because criminalizing the act of knowingly deriving support from a prostitute's earnings "discourage[s]" pimps "from augmenting and expanding a prostitute's operation, or increasing the supply of available prostitutes." (*People v. Hashimoto* (1976) 54 Cal.App.3d 862, 867.) In so doing, it discourages the exploitation of those persons who would become prostitutes. (*People v. Jeffers* (1987) 188 Cal.App.3d 840, 856 ["'[p]imping and pandering involve the corruption of others'"].) As the court noted in *Grant*,

these are quintessentially legitimate purposes that the anti-pimping statute undeniably serves. (*Grant*, *supra*, 195 Cal.App.4th at p. 117.)

Defendant raises three objections to this reasoning.

First, he argues that this reasoning renders the anti-pimping statute unconstitutionally vague because it criminalizes *both* the cohabitating pimp who nefariously uses his prostitute's earnings for support as well as the pimp who altruistically does so. This is true, but also irrelevant. Motive is what distinguishes the two pimps defendant posits, but motive is not an element of pimping by deriving support. The actual elements of that crime—namely, that a person "knowing[ly] . . . derive[] support or maintenance" from a prostitute's "earnings or proceeds"—are plainly spelled out in the statute itself. (§ 266h, subd. (a).) Because the statute does not "'leave[] the public uncertain as to the conduct it prohibits,'" it is not vague. (*Chicago v. Morales* (1999) 527 U.S. 41, 56, quoting *Giaccio v. Pennsylvania* (1966) 382 U.S. 399, 402-403.)

Second, defendant contends that even if *his conduct* may be prosecuted, the anti-pimping statute prohibits other constitutionally protected conduct because it makes it a crime for a prostitute to use her earnings to buy goods or services from people who know of her vocation (because, in his view, such a grocer or psychologist would be deriving support from a prostitute's earnings) or for a prostitute to care for her minor children. As an initial matter, we doubt that the anti-pimping statute applies in either scenario. Prior cases have held it does not. (*People v. Reitzke* (1913) 21 Cal.App. 740, 742-743 [statute does not apply to a person who enters into a business transaction with a prostitute to borrow money to open a saloon]; *Tipton*, *supra*, 124 Cal.App.2d at p. 218 [statute probably does not apply to a person selling food or clothing to a prostitute]; *Allen v. Stratton* (C.D.Cal. 2006) 428 F.Supp.2d 1064, 1072, fn. 7 ["'reasonable . . . construction'" of statute indicates it does not reach a prostitute's child or to service providers who "derive[] . . . support from [their] own performance of services and not directly from the prostitute's earnings"]; cf. *Tipton*, at p. 218 [statute reaches person who sells drugs to a prostitute with the "purpose, intent and effect of inducing [her]" to engage in prostitution].) More to the point, the statute's effect in other situations is relevant only to a facial challenge to the statute, not to the as-applied

challenge defendant purports to be making. *Grant*, as noted above, rejected a facial challenge to the anti-pimping statute's support and maintenance provision (*Grant*, *supra*, 195 Cal.App.4th at pp. 111-117), and defendant provides us no reason to reject *Grant*'s thorough and sound analysis.

Lastly, defendant decries the anti-pimping statute's ban on allowing a pimp to use a prostitute's earnings to support himself as a positively "Dickensian" and "Victorian" response to the ill of prostitution which, by prohibiting pimps from using their prostitutes' earnings to care for them, reflects a "social callousness that feeds the conditions of prostitution and pimping themselves" and "exacerbat[es] the very problem it is to solve." Stripped of its rhetoric and hyperbole, defendant is arguing that the anti-pimping statute is bad public policy. But that is a question reserved to our Legislature; it is off limits to the courts, and provides no basis for relief here.

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ